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10/082,912	02/26/2002	Jeffrey M. Stefan	GP-302115 2760/56	2683

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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/082,912
Filing Date: February 26, 2002
Appellant(s): STEFAN ET AL.

MAILED

DEC 23 2005

Technology Center 2600

Frank C. Nicholas (Reg. No. 33,983)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 19, 2005 appealing from the Office action mailed May 4, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

A substantially correct copy of appealed claims appears on pages 14-18 of the Appendix to the appellant's brief. The minor errors are as follows: page 17 contains claims 23 and 24 that appear to be from a separate application, and were never part of the current application.

(8) Evidence Relied Upon

2003/0027549

Kiel et al.

2-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Kiel et al., US Patent Application Publication Number 2003/0027549 (hereinafter Kiel).

Regarding claims 1, 5 and 9, Kiel discloses a method (computer readable code and system) for purchasing and replenishing wireless network calling time [0001], comprising: purchasing wireless network calling time through a web site [0037]; saving data encoding the purchased calling time from the web site to a portable networking device (activity-monitoring unit) [0009, 0025, 0034]; and transmitting the data encoding the purchased calling time from the portable networking device to an onboard system (client communication device) [0013, 0036].

Regarding claims 2, 6, and 10, Kiel discloses saving an encrypted record of data associated with the purchase within the web site record structure [0037].

Regarding claims 3, 7, and 11, Kiel discloses maintaining an updated record or remaining calling time within the onboard system [0036, 0043].

Regarding claims 4, 8, and 12, Kiel discloses notifying the subscriber when less than a specified amount of calling time remains [0043].

(10) Response to Argument

Regarding independent claims 1, 5, and 9, Appellant argues that Kiel does not disclose transmitting the data encoding the purchased calling time from the portable networking device to an onboard system. However, the Examiner respectfully disagrees. Kiel discloses purchasing and replenishing wireless network calling time [paragraph 0001], comprising: purchasing wireless network calling time through a web site [0037]; saving data encoding the purchased calling time from the web site to a portable networking device (activity-monitoring unit) [0009, 0025, 0034]; and transmitting the data encoding the purchased calling time from the portable networking device to an onboard system (client communication device) [0013, 0036].

Specifically, Appellant argues that the portable networking device and the onboard system are separate devices. However, Kiel teaches the activity monitoring unit and the client communication device embodied as separate devices. Kiel discloses the client communication device “*is connected* to an activity monitoring unit” [paragraphs 0013, 0025, emphasis added].

Appellant argues that the specification defines the portable networking device as containing a wireless transceiver capable of communicating with an Internet access

device. However, the specification states that the “portable networking device may be, for example, a personal data assistant (PDA), a cellular phone with memory capability, or *any other appropriate device*. Portable networking device *may* contain a wireless transceiver capable of communicating both with Internet access device and with an onboard system” [page 5, lines 16-20, emphasis added]. “May” does not imply an absolute feature. Kiel teaches that the activity monitoring unit includes a modem and interfaces with the Internet [paragraph 0037]. Therefore, the Examiner maintains that Kiel’s activity monitoring unit reads on the portable networking device of the present invention.

Appellant also contends that the onboard system is contained in a mobile vehicle. In response to applicant’s argument that the references fail to show certain features of applicant’s invention, it is noted that the features upon which applicant relies (i.e., an onboard system contained in a mobile vehicle) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Further, the Examiner contends that the client communication device can be contained in a mobile vehicle as it is well known to equip mobile vehicles with communication devices such as car phones. Kiel’s client communication device reads on the onboard system because it is performing the same function of receiving encoded purchased calling time from another device.

The Examiner contends that Kiel’s activity monitoring unit performs the function of the portable networking device of the present invention and the client communication

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device performs the function of the onboard system. Therefore, the Examiner holds that Kiel teaches the limitations of the present invention including purchasing calling time through a web site, saving data encoding the purchased calling time to a portable networking device (activity monitoring unit), and transmitting the data from the portable networking device to an onboard system (client communication device).


(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Erika Gary


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